TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 811.

THE UNITED STATES, APPELLANT,

vs.

ALAN H. WOODWARD, OSCAR W. UNDERWOOD AND REGINALD H. BANISTER, AS EXECUTORS OF JOSEPH H. WOODWARD, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 10, 1921.

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INDEX.

1 In the United States Court of Claims.

ALAN H. WOODWARD, OSCAR W. UNDERWOOD, REGINALD H. BANISTER, in their capacity as executors of JOSEPH H. WOODWARD, deceased,
vs.
THE UNITED STATES.
No. 34734.

I. Petition.

Filed November 18, 1920.

To the honorable the Chief Justice and Judges of the Court of Claims:

The claimant, Alan H. Woodward, Oscar W. Underwood, and Reginald H. Banister (all of Birmingham, Alabama), in their capacity as executors of Joseph H. Woodward, deceased, files this their petition in the above entitled cause, and shows the court and alleges as follows:

2 I.

Joseph H. Woodward was a resident citizen of the United States of America, and resided at Birmingham, Jefferson County, Alabama, and he departed this life at his residence in Birmingham, Alabama, on, to wit, the 15th day of December, 1917. The said Joseph H. Woodward had at all times prior to his death, borne true allegiance to the United States of America, and had not, in any way, voluntarily given encouragement to rebellion against said Government, or aided or abetted in any manner, or given comfort to any sovereign or government that is or ever has been, at war with the United States Government.

II.

Each and all of your petitioners are resident citizens of the United States of America, and reside at Birmingham, Jefferson County, Alabama, and they and each of them have, at all times, borne true allegiance to the Government of the United States, and have not, in any way, aided, abetted, or given encouragement to rebellion against said Government, or at any time aided or abetted in any manner or given comfort to any sovereign or government that is, or ever has been, at war with the United States Government.

III.

The said Joseph H. Woodward died leaving a last will and testament, with codicil thereto, which will and codicil was duly probated in the probate court of Jefferson County, Alabama, on, to wit, the

21st day of December, 1917, and letters testamentary thereon were issued to your petitioners by the said probate court, on to wit, the
21st day of December, 1917, and a duly authenticated copy of
3 the record of the appointment is filed with this petition, and
your petitioners are now, and have been continuously executors of said estate from the time of issue of said letters testamentary down to the time of the filing of this petition.

IV.

The said Joseph H. Woodward in and by said will and codicil made certain money bequests to diverse legatees and made certain specific bequests to certain devisees and, or legatees, devising to them specifically certain real and personal property, which property was not income producing and produced no income during the year 1918, and, all of the rest and residue of the property, both real, personal, and mixed property of every kind and character and wheresoever situated, of which the said Joseph H. Woodward died seized and possessed, was devised by a general devise, and, or legacy, by said Joseph H. Woodward to a trustee in trust, the net income to be paid over to the wife, children, or lineal descendants of said Joseph H. Woodward, as is more fully set forth in said will, and, or codicil.

The said Joseph H. Woodward, at the time of his death being a resident citizen of Jefferson County, Alabama, the probate court of Jefferson County, Alabama, had primarily the exclusive jurisdiction of the administration of said estate.

Under the laws of the State of Alabama, one year from date of grant of letters testamentary is allowed in which claims can be presented against the estate of a decedent, and no devisee and, or legatee, under a will has a right to enforce payment or delivery of a bequest or legacy before the expiration of one year from the date of grant of letters testamentary, and no devisee, and, or legatee, of a
general bequest or legacy is entitled to income or earnings
4 from property or assets, collected, earned, or accrued prior to
the expiration of one year from the grant of letters testamentary and the income or earnings from all property and assets of an estate other than property and assets specifically devised and, or bequeathed, collected, earned, or accrued prior to one year from date of grant of letters testamentary, belong to the estate of decedent for the benefit of the estate, and such income and, or earnings are and become the property and, or assets of the estate.

Your petitioners in their capacity as executors as aforesaid during the year 1918 and prior to the 21st day of December, 1918, collected all the income and earnings on and from the property and assets of said estate, all of said income and earnings collected being collected from stock, bonds, choses in action, and personal property, except that two thousand one hundred and thirty-eight and 10-100 ($2,138.10) dollars of said income so collected was collected from real

property, and none of said income or earnings was collected from property specifically bequeathed or devised by said will and, or codicil of said Joseph H. Woodward, deceased, and all of said income and or earnings so collected by your petitioners as executors as aforesaid was used and applied by your petitioners in their capacity as executors as aforesaid, in and towards the payment of the "estate tax" (to the United States) and, or other valid claims or charges against said estate, and your petitioners in their capacity as executors as aforesaid had the legal right to so use and apply said income and, or earnings.

V.

That in conformity with the requirements of secs. 223–225 of the "revenue act of 1918," your petitioners in their capacity as executors aforesaid, during the year 1919, and within the time prescribed by law, made and filed with the internal revenue collector (of the United States of America) for the district in which Birmingham, Jefferson County, Alabama, is located, a return of all of the income received by your petitioners in their capacity as executors of said estate during the year 1918, all in conformity with the requirements of law.

In and by said income tax return, your petitioners in their capacity as executors as aforesaid, claimed deductions authorized by the provisions of section 214 of the revenue act of 1918, including a deduction of $489,834.07, which was the amount of "Estate tax" chargeable against said estate as shown by the return for "Estate tax" filed (by your petitioners as executors as aforesaid, in pursuance of the requirements of law) with the internal revenue collector (of the United States of America) for the district in which Birmingham, Jefferson County, Alabama, is located, and which amount of "Estate tax" was paid by your petitioners in their capacity as executors aforesaid to the said internal revenue collector for the district in which Birmingham, Jefferson County, Alabama, is located, and which "Estate tax" petitioners aver was paid or accrued in the year 1918, and which "Estate tax" was imposed by the United States, or by the authority of the United States on or against the estate of Joseph H. Woodward under the revenue act approved October 3rd, 1917.

VI.

The Treasury Department of the United States, by or through the Commissioner of Internal Revenue (or other authorized officer) wrongfully refused to allow as a deduction on the said income tax return the said $489,834.07 "Estate tax" paid as aforesaid, or any part thereof, and wrongfully, on to wit, in October, 1919, made an assessment of income tax on said income tax return against your petitioners as executors as aforesaid, or against the estate of Joseph H. Woodward, to or in the amount of $165,075.78, and through the internal revenue collector for the district in which

Birmingham, Jefferson County, Alabama, is located, made demand on your petitioners in their capacity as executors as aforesaid for the payment of said tax so assessed.

Your petitioners, in their capacity as executors as aforesaid, protested against the assessment on said income tax return of said tax against your petitioners, or said estate, and declined to pay the same upon the ground that the said estate of Joseph H. Woodward, or your petitioners in their capacity as executors of said estate, were entitled to a deduction on said income tax return for said "Estate tax" paid, and claimed in said return under the provisions of section 214 of the revenue act of 1918 which is as follows:

"Section 214 (a). That in computing net income there shall be allowed as deductions: * * *

"(3) Taxes paid or accrued within the taxable year imposed,

"(a) By the authority of the United States except income, war-profits, and excess-profits taxes."

Upon said protest being made by your petitioners as aforesaid and on the refusal of your petitioners to pay said tax, the said Treasury Department by or through the Commissioner of Internal Revenue (or other authorized officer) took under consideration the said protest, but thereafter wrongfully declined and refused to allow said deduction claimed, or any part thereof, and on, to wit, the 19th day of July, 1920, the said internal revenue collector of the district in which Birmingham, Jefferson County, Alabama, is located, made a second demand on your petitioners in their capacity as executors as
7 aforesaid for the payment of said tax of $165,075.78, with threats of penalties and interest against your petitioners, in their capacity as executors as aforesaid, or said estate, if payment was not made, and which intimation that if payment was not made, summary action would be taken to enforce payment of said tax.

In order to avoid penalties, interest, distraint, and or summary proceedings for the enforcement of the collection of said tax, your petitioners in their capacity as executors as aforesaid, on, to wit, July 21st, 1920, made payment of said tax claimed of $165,075.78 to said internal revenue collector for the district in which Birmingham, Jefferson County, Alabama, is located, but at the time of making payment of said tax, protested against said tax and the payment thereof, and paid said tax under protest, and at the time of making payment, gave notice to the said collector that proceedings would be instituted to recover the said sum so paid, and which your petitioners as executors as aforesaid were wrongfully required to pay.

On to wit, the 21st day of July, 1920, your petitioners in their capacity as executors as aforesaid, duly filed an application with the said Treasury Department, through the said collector of internal revenue, to whom said tax was paid, praying for the refund of all of said tax so paid as aforesaid (which was the procedure required by said Treasury Department), and your petitioners are informed and believe that the said internal revenue collector in the

regular course of his official business, forwarded said application for refund to the Treasury Department for its consideration.

Said application was made on form 46 of the office of the Commissioner of Internal Revenue of the Treasury Department as required, and was in all respects complete, regular and in ac-
8 cordance with the laws and regulations, which application was duly verified by the affidavit of one of your petitioners, and the reasons set forth by your petitioners in their said claim for refund was that your petitioners as executors as aforesaid, or the estate of J. H. Woodward, were entitled, under the law as aforesaid, to a deduction of said "Estate tax" paid as aforesaid.

Although said application was in all respects complete and in due form, nevertheless, or or about the 21st day of October, 1920, the Secretary of the Treasury, or Commissioner of Internal Revenue, or other authorized officer of the United States Government, refused and denied said application, and has continuously denied and still denies and refuses to pay your petitioners the money asked for and demanded in said application as aforesaid, all of these facts being shown by the records of the office of the Commissioner of Internal Revenue of the Treasury Department, and being hereby referred to or prayed to be read and considered as a part of this petition.

VII.

There is no provision in the will, and, or codicil of Joseph H. Woodward, deceased, in regard to the "Estate tax," imposed by the United States of America, or the payment thereof, other than the general provision in said will, and, or codicil directing the executors to pay all debts and or charges against the estate of deceased, including cost and expense of administration of said estate.

VIII.

Your petitioners in their capacity as executors as aforesaid, are advised by counsel, and therefore aver, that the collection of said income tax collected from your petitioners in their capacity as executors as aforesaid, was wrongful, erroneous, and illegal,
9 which reasons were urged at the time claim for refund was made or pending in the Treasury Department, or before the Commissioner of Internal Revenue, or other authorized officer, and which are now urged here for reasons, viz:

(1) Your petitioners in their capacity as executors as aforesaid, or the estate of Joseph H. Woodward, under the provisions of section 214 of the revenue act of 1918, were entitled in the computation of the net income on said income tax return to an allowance as a deduction of the amount of said "Estate tax" paid, imposed by the United States as aforesaid, which tax was paid or accrued in the year 1918.

(2) If said "Estate tax" paid as aforesaid had been allowed as a deduction, as rightfully and legally it should have been allowed, neither your petitioners in the capacity as executors as aforesaid or said estate would have been liable for or chargeable with any income tax on said return, and no assessment of income tax of $165,075.78 or any other sum would or should have been made against either your petitioners in their capacity as executors as aforesaid, or said estate.

IX.

No action upon this claim, other than herein set forth, has been taken before Congress or other of the departments of the Government, or in any court other than the petition filed in this court.

X.

Your petitioners, Alan H. Woodward, Oscar W. Underwood, and Reginald H. Banister, in their capacity as executors of Joseph H. Woodward, deceased, aver that there is now justly due and owing to them in their capacity as executors as aforesaid, by the
10 United States, the said sum of $165,075.78, and that petitioners in their capacity as executors as aforesaid are justly entitled to the said amount from the United States after allowing all just credits and offsets; and that your petitioners in their capacity as executors as aforesaid are the sole owners of the claim herein sued upon, and that no assignment or transfer of the said claim, or any part thereof, or any interest thereon has been made. Wherefore, your petitioners pray for judgment against the United States for the said sum of $165,075.78, which is the sum your petitioners were wrongfully required to pay to the United States as income tax as aforesaid.

ALAN H. WOODWARD,
OSCAR W. UNDERWOOD,
REGINALD H. BANISTER,
In their Capacity as Executors of Joseph H. Woodward, Deceased.
By E. J. SMYER, *Attorney.*

STATE OF ALABAMA, *Jefferson County.*

Before me, ETHEL M. WARE, a notary public in and for said county, in said State, personally appeared A. H. Woodward, who is known to me, and who being by me duly sworn, according to law, deposeth and saith that he is one of the executors of Joseph H. Woodward, deceased, and that he has read and understands the foregoing petition, and that the facts stated in said petition are true, and those stated on advise of counsel are believed to be true.

A. H. WOODWARD.

Sworn to and subscribed before me this 12th day of November, 1920.

[SEAL.]

ETHEL M. WARE,
Notary Public.

11 *II. General Traverse.*

Filed January 18, 1921.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by rule 34.

III. Argument and submission of case.

On February 16, 1921, this case was argued and submitted on merits by Mr. E. J. Smyer, for the plaintiffs, and Mr. Assistant Attorney General Frank Davis, jr., for the defendants.

12 *IV. Findings of fact, conclusion of law, and opinion of the court by Downey, J.*

Entered March 14, 1921.

In this case the parties by their attorneys have entered into an agreed statement of facts, the defendant acting by and through its Assistant Attorney General and the plaintiffs by their attorney, and they have agreed "that the following statement of facts is true and may embrace the findings of fact by the court in this case." Thereupon the court makes the following findings of fact, which are the agreed statement of facts:

"I.

"Alan H. Woodward, Oscar W. Underwood, and Reginald H. Banister are executors of the estate of Joseph H. Woodward, deceased, and bring this action in their capacity as such executors.

"II.

"The plaintiffs are each and all citizens of the United States and residents of the city of Birmingham, county of Jefferson, State of Alabama, and have at all times borne true allegiance to the Government of the United States and have not in any way aided, abetted, or given encouragement to rebellion against the said Government, or at any time aided or abetted in any manner, or given comfort to any sovereign or Government that is, or ever has been, at war with the United States.

"III.

"Joseph H. Woodward was a citizen of the United States and resided at Birmingham, Jefferson County, State of Alabama, and died at his said residence on the 15th day of December, 1917. The

said Joseph H. Woodward had at all times prior to his death borne true allegiance to the United States of America, and had not in any way voluntarily given encouragement to rebellion against said Government, or aided or abetted in any manner, or given comfort to any sovereign or Government that is, or ever has been, at war with the United States.

13 "IV.

"The said Joseph H. Woodward died leaving a last will and testament with codicil thereto; which will and codicil was duly probated in the Probate Court of Jefferson County, State of Alabama, on the 21st day of December, 1917, and letters testamentary therein were issued to said executors by said Probate Court on the 21st day of December, 1917. A certified copy of said last will and testament and codicil thereto is annexed hereto, made a part hereof, and is marked Exhibit A.

"V.

"The said Joseph H. Woodward in and by said will and codicil made certain money bequests to devisees and legatees and made certain specific bequests to certain devisees and legatees, devising to them certain real and personal property, which property was not income producing, and produced no income during the year 1918. All the rest and residue of the property, both real, personal, and mixed, of every kind and character, of which said Joseph H. Woodward, deceased, was seized and possessed, was devised by a general devise or legacy by said Joseph H. Woodward to a trustee in trust, the net income to be paid over to the wife, children, or lineal descendants of said Joseph H. Woodward.

"VI.

"The said executors, in their capacity as executors of the estate of said Joseph H. Woodward, during the year 1918 and prior to the 21st day of December, 1918, collected all the income and earnings on and from the property and assets of said estate, all of said income and earnings collected being collected from stock, bonds, choses in action, and personal property, except that $2,138.10 of said income so collected was collected from real property, and none of said income or earnings was collected from property specifically bequeathed or devised by said will or codicil of said Joseph H. Woodward, deceased; and all of said income and earnings so collected by said executors was used and applied by them in their capacity as such executors in and towards the payment to the United States of the 'estate tax' (imposed by the act of September 8, 1916, and amendments thereto by the acts of March 3, 1917, and October 3, 1917) and other valid claims or charges against said estate.

"The gross amount of income received by the executors from the said estate for the year 1918 was less than the amount of the said 'estate tax' paid by them to the United States.

"In conformity with the requirements of sections 223–225 of the revenue act of 1918 the said executors during the year 1919 and within the time prescribed by law made and filed with the collector of internal revenue for the district in which Birmingham, Alabama, is located a return of all the income received during the year 1918 by said executors in their capacity as executors of the estate of said Joseph H. Woodward, deceased. In said income-tax return said executors claimed deductions under the provisions of section 214 of the revenue act of 1918, including a deduction of $489,834.07,
14 which was the amount of 'estate tax' chargeable against said estate as shown by the return for 'estate tax' filed by said executors with the collector of internal revenue for the district in which Birmingham, Alabama, is located, and which amount of 'estate tax' was paid by said executors to said collector on the 8th day of February, 1919.

"The Commissioner of Internal Revenue refused to allow as a deduction on the said income-tax return the said $489,834.07 'estate tax' so paid by said executors, and in October, 1919, made an assessment of income tax on said income-tax return against said executors or against the estate of Joseph H. Woodward in the amount of $165,075.78, and through the collector of internal revenue for the district in which Birmingham, Alabama, was located, made demand on said executors for the payment of the tax so assessed.

"VII.

"The said executors protested against the assessment on said income-tax return of said tax against them as such executors, or against said estate, and declined to pay the same, upon the ground that said estate of Joseph H. Woodward or said executors was entitled to a deduction on said income-tax return for the said 'estate tax' paid.

"VIII.

"Upon said protest being made by said executors, as aforesaid, and upon their refusal to pay said tax, the Commissioner of Internal Revenue declined and refused to allow said deduction of the claim or any part thereof; and on the 19th day of July, 1920, the collector of internal revenue for the said district in which Birmingham, Alabama, is located, made a second demand on said executors for the payment of said tax of $165,075.78, with threats of penalties and interest against said executors, if payment was not made, and with intimation that if payment was not made summary action would be taken to enforce payment of said tax.

"IX.

"In order to avoid penalties, interest, restrain, or other summary proceedings for the enforcement of the collection of said tax, said executors, on July 21, 1920, made payment of said tax claimed of $165,075.78 to the said collector of internal revenue for the district in which Birmingham, Alabama, is located, but at the time of making payment of said tax protested against said tax and the payment thereof and paid the tax under protest, at the same time giving notice to the said collector that proceedings would be instituted to recover the said sum so paid.

"X.

"On July 21, 1920, said executors duly filed an application with the Commissioner of Internal Revenue praying for the refund of all of said tax so paid. Said application for refund was in all respects complete and in due form, but was on or about the 21st day of October, 1920, denied and rejected by the Commissioner of Internal Revenue, who still denies and refuses to pay said executors the money asked for and demanded by them in said application.

"XI.

"The said sum of $165,075.78, so paid by said executors as and for a tax as aforesaid, was received and is still retained by the United States.

"XII.

"The said executors, in their capacity as such, are the sole owners of the claim sued upon herein, and no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made.

"XIII.

"All public laws of the State of Alabama, pertinent, are to be considered as if duly authenticated and offered in evidence.

"XIV.

"If the court concludes as a matter of law that the plaintiffs are entitled to judgment against the United States, the amount to which they are entitled is the sum of $165,075.78."

XV.

The court further finds that the said will and codical made Exhibit A to the statement of facts names the plaintiffs as executors. They are directed to pay the cost and expenses of administering the

estate, including funeral expenses and debts and the money bequests out of moneys on hand at the time of the testator's death if sufficient therefor. The rest of the money on hand is directed to be disposed of by the executors paying one-half of it to the trustee named in the will and codicil for investment, and the other half in equal parts to the wife, son, and two daughters of the testator. All of his property, except as has been stated in the findings above, was devised and bequeathed to a trust company named as trsutee, and the executors are directed to turn over as soon as practicable the trust property to the trustee, who is authorized to preserve, control, and invest or reinvest the same and distribute the net income thereof among the widow and children and grandchildren of the testator in designated proportions. Upon the death of the children or the survivor of them the estate in the hands of the truetee is to pass to the grandchildren, with some exceptions not material.

Conclusion of law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiffs are entitled to recover the sum of $165,075.78. It is therefore adjudged and ordered that the plaintiffs recover of and from the United States the sum of one hundred and sixty-five thousand seventy-five dollars and seventy-eight cents ($165,075.78.)

16 *Opinion.*

DOWNEY, Judge, delivered the opinion of the court:

The plaintiffs are the duly appointed and acting executors of the last will and testament of Joseph H. Woodward, deceased, a resident and citizen of the State of Alabama, who died testate, December 17, 1917. His will was duly admitted to probate and letters testamentary were issued to the plaintiffs named therein as executors on December 21, 1917. There is no controversy as to the facts and they are found as agreed upon by the parties.

Under the provisions of the war revenue act of October 3, 1917 (40 Stat., 300 at 324), amending the act of September 8, 1916 (39 Stat., 756 and 777), as amended by the act of March 3, 1917 (39 Stat., 1000 at 1002), the executors paid to the collector of internal revenue an estate tax in the sum of $489,834.07. No question is raised as to the validity of the estate tax so paid nor as to its amount. It becomes an important feature of the case in another respect.

The entire estate of the decedent passed into the hands of the executors, the plaintiffs herein, immediately after their qualification as such and during the year 1918 and prior to the 21st day of December of that year they collected income and earnings from the property and assets of the estate, all of such income being derived from stocks, bonds, choses in action, and personal property ex-

cept $2,130.10 derived from real property and none of said income was collected from property specifically devised or bequeathed by the will of the decedent. On the 12th of March, 1919, as required by section 225 of the revenue act of 1918 (40 Stat., 1074), the executors made and filed with the proper collector of internal revenue a return of the income received by them during the year 1918 as executors of said estate and in said income-tax return they claimed as a proper deduction under the provisions of section 214 of said revenue act the amount of said estate tax which had been paid by them to the collector of internal revenue on the 8th day of February, 1919. The Commissioner of Internal Revenue refused to allow said deduction and on said return assessed an income tax against said executors in the amount of $165,075.78 and made demand through the collector of internal revenue on said executors for the payment of the income tax so assessed. To avoid penalties or summary proceedings for the enforcement of the said income tax the executors on July 21, 1920, paid the same, but at the time of making payment protested and gave notice that they would institute suit to recover the same. Thereafter on July 21, 1920, said executors filed with the Commissioner of Internal Revenue an application for the refund of all of the said income tax so paid which application was thereafter denied by the Commissioner of Internal Revenue and this suit was instituted for the recovery of said sum of $165,075.78. In this instance the amount of the estate tax was in excess of the total amount of the income so that the action is brought for the recovery of the full amount of the income tax paid for the year 1918. But the question is as to the right to deduct from the income tax for that year the estate tax which accrued during the same year irrespective of the relative amounts.

17 The contention of the plaintiffs is that the income tax is imposed upon the "net income" of the estate and that by section 212 the net income was declared to mean the "gross income" as defined in section 213, less the deductions allowed by section 214, and it is contended that the estate tax which accrued during the year 1918 and was paid, as stated by the executors, is specifically within the provisions of section 214. That section provides that in computing net income there shall be allowed as deductions (1) all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business; (2) or interest paid or accrued within the taxable year on indebtedness, with an exception not material here; (3) "taxes paid or accrued within the taxable year imposed (*a*) by the authority of the United States, except income, war profits and excess profits taxes," or (*b*) by the authority of any of its possessions with the same exception, or (*c*) by the authority of any State, Territory, county, school district, or municipality of any State or Territory, or (*d*) in certain cases by authority of a foreign country. In addition to these there are other deductions authorized by section 214 not material here.

The defendant, in support of its contention that the estate tax could not be properly claimed as a deduction in the computation of the net income of the estate on which the income tax for the year 1918 was assessed, lays down in its brief two propositions as follows:

(1) "The Federal estate tax is a tax upon the passing of property from the dead to the living; it is toll taken from the property transferred and does not constitute a part of the estate which is received by the executors to be administered and settled."

(2) "The income tax is imposed upon the income received from the estate by the executors during the period of administration; the liquidation of the Federal estate tax by such executors does not constitute a payment of taxes by the estate within the meaning of section 214 (*a*) of the revenue act of 1918."

In discussing the first proposition the estate tax is referred to as "an excise on the transmission of the estate from the dead to the living," and it is said that "it is a 'toll' cut out of the estate in passing, and the property that reaches the executors is the original propery diminished by the amount of the tax. It follows that the amount of the tax does not constitute a part of the estate which is administered by the executors." And referring also to the income tax, as well as the estate tax, it is said that—

"The Government collects an income tax on the income accruing up to the moment of death. It then takes out of the estate a certain part known as the Federal estate tax. The remainder of the property of the deceased passes to the executors and becomes the estate, the income of which is taxable while the estate is being administered. When the estate passes into the possession of an executor he holds in trust for the United States that portion which is required to be deducted as a transfer tax. The remainder is the estate which he holds in trust for creditors and beneficiaries, the income of which is taxable. When he pays to the Government that which he has been holding in trust for it, he pays nothing out of the estate whose income is subject to tax. The law separates this part of the original estate from that part which is to be treated as the estate for purposes of the income tax."

18 The first proposition seems to be the foundation stone of the defendant's contention, and if it is not well founded argument predicated upon it must fail of support. For the purposes of its consideration it may be conceded, as contended, that the Federal estate tax is a tax upon the passing of property from the dead to the living, since for the purposes of the present discussion of the proposition it is immaterial whether that tax is a tax upon the passing of the property or upon the property itself. The theory of the proposition otherwise is that there is an immediate segregation of a part of the estate and a withholding thereof from the usual processes of administration, and that therefore the tax is not paid out of the estate to be administered.

Such a theory seems to be in conflict with the real facts and we may well question the right to inject into an interpretation of the law a

theory, no matter how desirable it may be from some standpoints, if inconsistency between it and the real facts must necessarily result. We may not, in construing statutes, disregard the plain meaning of words. We may not in fact apply recognized rules of construction at all if there is no ambiguity and hence no room for construction and we may not adopt an interpretative theory as to the law if it be inconsistent with established principles or the plain provisions of the law itself.

In considering this theory we are confronted, first, with established and well-recognized principles and, second, by pertinent and forceful provisions found in the taxing act itself. It is well settled, first, that the Federal Government does not undertake to enact statutes of descents or to provide for the administration of estates. These are matters reserved to the States themselves and it may not be inappropriate to observe that the general principles applicable to probate procedure in the administration of estates may be found to be much the same in all the States of the Union. Aside from the general principle it is important in construing the taxing act in the feature with which we are here concerned to observe that it recognizes the subjection of the entire estate of a decendent to the usual processes of administration under the established probate procedure of the proper jurisdiction and in no place suggests the theory that the act is itself intended to remove a part of the estate therefrom.

Section 205 of the act recognizes the fact that the entire estate of a decedent comes into the possession of his executors, if executors there be, for, return as to the gross estate, the deductions, and the resultant net estate is to be made by the executors as provided in the act and they are also to report "the tax paid or payable thereon." There is found no suggestion, even that a part of the estate is segregated at the death of the decedent and held, not by the executors as such, but as trustees in trust for the United States and such a theory is excluded by the act itself. There are too many contingencies, notably the matter of deductions provided for in section 203, and like matters, to permit of such a theory and, incidentally, it may be suggested that the allowance by that section as a deduction, of "such other charges against the estate as are allowed by the laws of the jurisdiction," strongly confirms the proposition as to a recognition of the proper probate jurisdiction over the entire estate.

19 If the theory of a segregation in fact as of the date of the death of the decedent cannot be maintained, it would seem that it must be a theory attaching in some intangible way to an unascertained part of the estate to be made certain during the processes of administration and operative retroactively. But the processes themselves exclude the idea that a part of the estate has not passed into the hands of the executors as executors.

But further, it is provided that the tax shall be paid by the executors (sec. 207) and that the collector shall grant receipts therefor

in duplicate and that such receipts shall entitle the executors to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. These provisions can certainly be interpreted in no other way than as a recognition of the fact that the executors as executors, accountable to the proper probate court, and not as trustees for the United States, are chargeable with the whole estate which has come to their hands and are entitled to an acquittance as to the amount paid to the collector as estate tax just as upon presentment of proper vouchers they are to be credited with the amount of any proper debt paid or any proper expense of administration.

And there are other features, perhaps minor in a sense, but enlightening. The tax shall be a lien for ten years upon the gross estate (sec. 209) except parts used for payments of claims and expenses of administration, a provision entirely inconsistent with the theory of a segregation, for a segregated part of a thing can scarcely be made a lien, in a legal sense, on the remaining part, though the fixing of a lien is a recognized method of securing a payment to be made. And peculiarly, even after the amount of the tax, in theory a segregated part of the estate, is ascertained, the amount of money to be paid may still fluctuate. The tax is due one year after the decedent's death (sec. 204); but if paid before it is due, a discount at the rate of five per centum per annum from the time of payment to the date when due is to be allowed. Thus the segregated part is to be reduced by some fraction of five per centum; but for whose benefit? Under the theory of a segregation and a nonadministration and a holding in trust for the United States it must result that the United States allows its trustees a part of its property for turning it over before required to do so.

But on the other hand, for delays, interest is to be "added as a part of the tax" at the rate of ten per centum per annum from the time of the decedent's death, but at only six per centum if by reason of claims against the estate, necessary litigation or other unavoidable delay the tax can not be determined, a situation which under the theory advanced not only imposes a penalty on the estate for avoidable delays on the part of the executors but also for unavoidable delays, and changes the basis of the segregation and makes it contingent upon the processes of administration.

While referring to the stated theory of the defense and before proceeding with such other views as may occur, it is appropriate to resort to the extension of the theory, possibly necessary to its justification, to the question of the source of the income tax to be levied. The theory is, supporting the idea of a segregation, that it is the portion of the estate remaining after the segregation which is held in trust for creditors and beneficiaries and "the income of which is taxable." Again the theory is in conflict with the facts. More than that, the Government has proceeded upon one theory in collecting the income tax and defends upon another, for

the income tax assessed and collected was upon the income produced by the entire estate. And what an anomalous situation must result from an attempt to apply the theory! If the theory is correct, then income has been taxed which was not taxable. It was income derived from a portion of the estate segregated to the United States, and while it may be said that the earnings belong to the owner of the capital there is no provision for the payment of earnings as a part of the estate tax.

But primarily the executors are accountable to the proper probate court for their management of their trust and they could hardly discharge themselves from responsibility by accounting for less than all the income derived from the entire income-producing estate. Neither could they justify themselves in so handling the estate as to convert an income-producing portion thereof into idle assets.

The various provisions thus recited seem to clearly indicate that the tax is a charge upon the estate. The statute calls it an "estate tax." In Knowlton v. Moore, 178 U. S., 41, 65, the use of the heading "legacies and distributive shares of personal property" in the act was taken as indicative of what was in fact taxed. Here it is "estate." There the tax was upon the passing of legacies or distributive shares. The tax under consideration is imposed upon the transfer of the net estate. In Knowlton v. Moore the statute under consideration was the act of 1898, and it was declared to mean either that the tax was imposed on the passing of the whole amount of the personal estate, or on the passing of legacies or distributive shares of personalty, determined either by the separate sum of each legacy or distributive share or by the volume of the whole personal estate. The court, speaking through Mr. Justice (now Chief Justice) White, say (p. 65): "The statute clearly imposes the duty on the particular legacies or distributive shares, and not on the whole personal estate. It does not say that the tax is levied on the personal estate left by the deceased person, but it is imposed on legacies or distributive shares arising from such property."

It must be recognized that the Congress, in considering the act of 1916, was familiar with the act of 1898, and the construction of it by the Supreme Court in Knowlton v. Moore. Indeed, by reference to the report of the Committee on Ways and Mean (Report No. 922, 64th Cong., 1st sess.), having the bill in charge, it appears that the distinction between an estate tax upon the transfer of the estate and a tax upon the shares passing to distributees or legatees was had in view by the committee. It was said "Your committee deemed it advisable to recommend a Federal estate tax upon the transfer of the net estate rather than upon the shares passing to heirs and distributees or devises and legatees." See upon this point In re Hamlin, 226 N. Y., 407, where the court considers the proceedings in Congress upon the passage of the bill.

The question as to what was intended would seem to be set at rest, however, by section 208 of the act, 39 Stat., 779, which provides for

the collection of the tax if not paid within 60 days after it is due, and declares the purpose of the act as follows: "It being the
21 purpose and intent of this title that so far as is practicable, and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution."

As sustaining the contention of the defendant that the estate tax "is a toll taken from the property transferred and does not constitute a part of the estate which is received by the executors to be administered and settled," we are referred to an opinion of the Acting Attorney General, dated April 10, 1920, and some cases to be noticed. It is said in that opinion, speaking of the executor or administrator: "It is in his capacity as the representative of those ultimately entitled to the estate that he is subject to income tax. By virtue of the Federal estate tax he may be said to act in a dual capacity. He must first take possession of that part of the estate which the Government has reserved to itself as a transfer tax. As to this he takes possession for the Government, and his sole duty is to turn it over to the Government. What comes to his hands as the representative of the beneficiaries of the estate is what is left of the original estate after deducting this tax."

This view ignores the legal status of an administrator, who is the personal representative of the decedent, and seeks to make him a representative of heirs or distributees.

As already stated, the estate tax is not a given percentage of the estate in kind. If the decedent left an estate composed largely of live stock the estate tax would not be satisfied by taking a part of the live stock; or if it were an estate composed of stocks and bonds the estate tax is not satisfied by taking such a percentage of the bonds and such a percentage of the shares. These different kinds of property are to be valued, and the estate tax is a sum equal to a percentage, which is made progressive, of the value. Nutt v. Knut, 200 U. S., 12, 21; United States v. Field, decided by the Supreme Court, February 28, 1921.

Prentiss v. Eisner, 260 Fed., 589, affirmed by the Circuit Court of Appeals, 267 Fed., 16, relied on by defendant, presented the question as to whether a legatee against whom had been assessed an inheritance tax under the laws of the State of New York could deduct that tax from her gross income in rendering a return of the income for taxation under the Federal statute. The case is different from the one before us in several aspects: (1) It involved a construction of the act of 1913; (2) it involved the right of the legatee to set off against her income a State inheritance tax; (3) it did not involve the right of executors or administrators charged with the duty of paying out of the estate of the decedent the estate tax to make a deduction from the gross income on account of a Federal tax which they must pay out of the estate in their hands. It was held by the Circuit Court of Appeals in the case mentioned that the legacy which the plaintiff received did not become her property until after it had suffered a diminution to the amount of the tax, and that the State

inheritance tax was not a tax paid out of her individual estate, "but was a payment out of the estate of her deceased father of that part of his estate which the State of New York had appropriated to itself, which payment was the condition precedent to the allowance by the State of the vesting of the remainder in the legatee." It is
22 not difficult to understand why a legatee is not allowed to deduct from her income tax the amount which was paid out of the estate before the amount of the legacy to which she would succeed could be known. The statute provides that the legacies themselves are not income but become capital in the hands of the legatees, and its purpose, as is stated in the act, is to collect the estate tax out of the estate before it reaches the hands of legatees or distributees. The case just mentioned admits that the tax is laid upon the estate. It recognizes the distinction between the tax on the legatee's right of succession and a tax upon the transfer of the estate itself.

The case of In re Hamlin, supra, was decided by the Court of Appeals of New York and involved, among other questions, the construction which the court would give to the tax imposed by the act of 1916. It was held that the act created an estate tax as distinguished from an inheritance tax and made it payable from the estate. The case considers not only the language of the act but the history of its passage through Congress, and said: "When the Congress provided that the tax was imposed upon the value of the net estate, the manner in which said value should be determined, and that the executor should pay the tax, and in section [208] above quoted said: 'It being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution,' the conclusion is inevitable that the tax was not imposed on legacies."

Another case to which we are referred is Plunkett v. Old Colony Trust Company, 124 N. E., 265, wherein the Massachusetts court holds that the tax imposed by the revenue acts of 1916 and 1917 is an estate tax imposed upon the net estate transferred by death and not upon a succession resulting from death. The single question presented was whether the Federal tax which had been paid should be charged entirely against the residue of the estate or apportioned pro rata among all the devisees and legatees, and after full consideration of the authorities it was held as has been stated.

In Lederer v. Northern Trust Co., 262 Fed., 52, the question was whether the collateral inheritance tax imposed by the State of Pennsylvania fell within the deductions allowed by section 203 of the Federal estate-tax act of 1916 in arriving at the value of the net estate on which the Federal act imposes the tax. It appeared that the Supreme Court of Pennsylvania construed the collateral inheritance tax of that State to be an estate tax and not a legacy tax, and that as such it was levied on and made a charge against the estate of the decedent. It was therefore held by the Circuit Court

of Appeals that the State tax fell within the provision of the Federal act as a charge against the estate of the decedent allowed by the laws of the jurisdiction under which the estate was being settled, and was therefore deductible from the gross estate in determining the net estate against which the Federal estate tax is assessed.

In United States v. Perkins, 163 U. S., 625, it appeared that the testator had bequeathed his estate to the United States Government, and the question was whether that bequest was subject to the inheritance tax authorized by the State of New York. The court held that the State act was not open to the objection that it was an attempt to tax the property of the United States, "since the tax
23 is imposed upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it." This would be equally true if the estate had owed debts which had to be paid before the amount of the legacy could be known, or if there were liens upon the property bequeathed or devised.

In none of the cases to which we have referred is there a holding that the State or Federal Government, by either an inheritance or estate tax, takes a distinct part of or interest in an estate as distinguished from a tax equal to a stated percentage of its value.

Corbin v. Townshend, 103 Atl., 647, involved the question of the amount of succession tax under the State statute, and the Connecticut court allowed as deductions the item of taxes paid, including the Federal estate tax, "as an administration expense." The court said: "The Federal act of 1916 imposes a tax payable out of the estate before distribution, thus differing from the Federal inheritance tax of 1898, payable by the individual beneficiaries. * * * It is taken from the net estate before the distributive shares are determined rather than off the distributive shares. Its payment diminishes pro tanto the share of each beneficiary. The executor or administrator must pay the tax out of the estate before the shares of the legatees are ascertained. It is an obligation against the estate, and payable like any expense which falls under the head of administration expenses."

In re Roebling's Estate, 104 Atl., 295, in the Prerogative Court of New Jersey, the question was whether the estate tax imposed by the revenue act of 1916 was to be deducted from the value of the estates of decedents in assessing the transfer of the inheritance tax imposed by the State. It was held that the Federal tax must be deducted because it was a tax upon the estate. The court observed that the Federal tax resembles the probate duty of the act of July 1, 1862, 12 Stat., 483, "which was payable by the executor out of the estate, while the legacy duty therein provided for was payable by the beneficiaries."

Another case was that of In re Knight's Estate, before the Supreme Court of Pennsylvania, 104 Atl., 765, wherein the same ruling was made as that by the New Jersey court. The Supreme Court affirms the opinion of the lower court, which said relative to the tax: "It is denominated an estate tax, not a tax upon the succession or inheritance, and it is charged upon and payable out of the net estate of the decedent. It is imposed without regard to the provisions of the will or the law of the several States, the paramount taxing power of the Federal Government takes effect at the moment of the owner's death upon his entire estate, subject only to specific deductions. * * * and it requires payment therefrom of a tax according to a graduated scale, regulated by the net amount of the taxable estate."

Reference has been made to the case of In re Hamlin, 226 N. Y., 407, holding that the estate tax is payable out of the estate. Also to the case of Plunkett v. Old Colony Trust Company, wherein substantially the same ruling is made by the Massachusetts court.

24 In People v. Northern Trust Co., 289 Ill., 475, 124 N. E., 662, it is held that in computing the State inheritance tax on the value of property passing by a will the executor is entitled to have first deducted therefrom the Federal estate tax. The court said:

"The Federal estate tax is a charge, or an expense, against the estate of the decedent rather than against the shares of the legatees or the distributees, and as part of the expense of administration this tax should be deducted before computing the State inheritance tax."

It thus appears from the terms of the statute itself and its declared purpose that the estate tax is a tax which is levied upon, and payable out of, the estate in the hands of the executors, and that the authorities in some instances hold it to be a charge of administration, while all of them hold it to be payable out of the estate.

In allowing a deduction of taxes from gross income in order to ascertain the net income the statute excepts "income, war-profits, and excess-profits taxes." 40 Stat., 1067. It does not except the estate tax.

We are, in effect, asked to construe the statute so as to nullify one of its plain provisions, to wit, one of the exemptions provided for in the statute. If the correct construction should be a matter of doubt we think it proper to follow the rule laid down in Gould v. Gould, 245 U. S., 151 at 153. "In the interpretation of the statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government and in favor of the citizen." (Cited in the Field Case, decided Feb. 28, 1921.) We do not feel that we are justified in adding another exception to those provided for in the statute. If Congress had intended that the estate tax

should not be deducted in determining the net income it would have said so and included it in the exceptions, "income, war-profits, and excess-profits taxes."

Inasmuch as the estate tax must necessarily reduce the estate itself which ultimately goes to the distributees, legatees, or devisees, and reduces it by a tax that is ascertained by a progressive percentage of the value, it may well be that Congress, recognizing that feature, did not except the estate tax from the deductions authorized by the statute.

We are not unmindful of the importance of this holding and of its possible effect on revenues and the Public Treasury, but we can not conclude that such matters should be in anywise controlling.

We are of the opinion that the plaintiffs are entitled to judgment as claimed, and it is so ordered.

Graham, judge; Hay, judge; Booth, judge; and Campbell, chief justice, concur.

25 *V. Judgment of the court.*

At a Court of Claims held in the city of Washington on the fourteenth day of March, A. D. 1921, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiffs, and do order, adjudge, and decree that Alan H. Woodward, Oscar W. Underwood, Reginald H. Banister, in their capacity as executors of Joseph H. Woodward, deceased, as aforesaid, are entitled to recover and shall have and recover of and from the United States the sum of one hundred and sixty-five thousand seventy-five dollars and seventy-eight cents ($165,075.78).

BY THE COURT.

VI. Defendant's application for and allowance of an appeal.

From the judgment rendered in the above-entitled cause on the 14th day of March, 1921, in favor of the claimants, the defendants, by their Attorney General, on the 17th day of March, 1921, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ANNETTE ABBOTT ADAMS,
Assistant Attorney General.

Filed March 17, 1921.

Ordered: That the above appeal be allowed as prayed for.

BY THE COURT.

March 17, 1921.

26 Court of Claims.

ALAN H. WOODWARD, OSCAR W. UNDERWOOD, REGINALD H. BANISTER, in their capacity as executors of JOSEPH H. WOODWARD, deceased,
vs.
THE UNITED STATES.
No. 34734.

I, F. C. Kleinschmidt, assistant clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law; of the opinion of the court by Downey, J.; of the judgment of the court; of the defendant's application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 18th day of March, A. D. 1921.

[SEAL.] F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

(Indorsement on cover:) File No. 28168. Court of Claims. Term No. 811. The United States, appellant, vs. Alan H. Woodward, Oscar W. Underwood, and Reginald H. Banister, as executors of Joseph H. Woodward, deceased. Filed March 19th, 1921. File No. 28168.

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE UNITED STATES, APPELLANT,
v.
ALAN H. WOODWARD, OSCAR W. UNDERWOOD, and Reginald H. Banister, in their capacity as executors of Joseph H. Woodward, deceased.
No. ——.

APPEAL FROM THE COURT OF CLAIMS OF THE UNITED STATES.

MOTION BY THE UNITED STATES TO ADVANCE.

The United States, by the Solicitor General, respectfully moves that this case be advanced for hearing on April 11, 1921.

The case arises under and involves the construction and application of revenue laws of the United States.

The case presents squarely the question whether the estate tax imposed by sec. 201 of the Revenue Act of 1916, 39 Stat., c. 463, pp. 756, 777, as amended by sec. 900 of the act of 1917, "upon the transfer of the net estate of every decedent dying after the passage of this act" is an allowable deduction in computing the net income of an estate taxable under

secs. 219, 210, 211, 212 of the act of 1918 by virtue of sec. 214 (a) of the act of 1918, providing—

> That in computing net income there shall be allowed as deductions: (3) Taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war-profits, and excess-profits taxes. * * *

Joseph H. Woodward, a citizen and resident of Alabama, died on December 15, 1917, leaving an estate upon which an estate tax, imposed by the act of 1916, as amended, amounting to $489,834.07, was paid by his executor (claimants herein) in the year 1918. This estate tax exceeded in amount the *income* on the estate in the hands of the executors for the year 1918. In making their income tax return for this estate for the year 1918 the executors claimed a deduction under section 214 (a) of the act of 1918 on account of the estate tax of $489,834.07 paid by them. The Commissioner of Internal Revenue disallowed said deduction and assessed an income tax against the estate of $165,075.18. The executors protested against the assessment and declined payment. On April 10, 1920, the Attorney General rendered an opinion holding that the estate tax is a tax upon the passing of property from the dead to the living and does not constitute a part of the estate which is received by the executor to be administered and settled; that the income tax is imposed upon the income received from the estate by the executor during the period of administration, and that the

payment of the estate tax by the executor does not constitute a payment of taxes by the estate within the meaning of section 214 (a) of the act of 1918.

Thereafter, upon a second demand being made by the collector, the executors of Mr. Woodward paid under protest the income tax assessed, and, after due procedure, brought this suit in the Court of Claims to recover the amount so paid, namely, $165,075.78.

On March 14, 1921, the Court of Claims rendered judgment for claimant.

The case is of great importance, and an early decision is earnestly desired by the Treasury officials, because of the large number of estates throughout the United States, where the same situation exists. These estates can not be settled properly until this question is finally decided. The Government refusing to allow the deduction here claimed, has collected large sums of money, paid under protest, and every reason exists, both on behalf of the public and the officials charged with the execution of the revenue laws, to justify the request that this case be heard before the adjournment of the present term of this honorable court.

Opposing counsel has authorized the Solicitor General to state that he joins in the request to advance this case.

WILLIAM L. FRIERSON,
Solicitor General.
FRANK DAVIS, Jr.,
Special Assistant to the Attorney General.

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